THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 05.09.2007

+ **WP(C) 2753/2007**

S.K.N. ASSOCIATES PVT. LTD & ANOTHER ... Petitioners

- versus -

UNION OF INDIA AND ANOTHER ... Respondents

Advocates who appeared in this case:

For the Petitioners	:	Mr Parag Tripathi, Sr Advocate with Ms Neelima Tripathi, Mr Deepesh Ahuja and Ms Taru Gupta
For the Respondent No.1	:	Mr Gaurav Duggal
For the Respondent No.2	:	Mr Vikas Singh, ASG with Mr B.K. Sood and Mr Yogesh Kumar

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ? Yes

2. To be referred to the Reporter or not ? Yes

3. Whether the judgment should be reported in Digest ? Yes

BADAR DURREZ AHMED, J

1. This writ petition is directed against the deletion contained in the 14th Endorsement to the petitioner No.1's certification marks licence No. CM/L-2341642 for IS: 9798: 1995 which seeks to delete "single stage low pressure regulators for use with LPG mixtures, suitable for valves having 25.6 mm collar diameter and maximum rated capacity = 0.5 m^3/hr" from the said licence. The petitioners also seek a writ of

mandamus directing the respondents to grant renewal of the licence without the aforesaid deletion.

2. The petitioner No.1 is engaged in the manufacture of various appliances, including LPG pressure regulators marketed under the trade name and style "SKN". The petitioner No.2, who is a citizen of India, is a share-holder and Director of the petitioner No.1. In 1987, the petitioner No.1 is said to have commenced production of LPG pressure regulators used for regulation of the flow of LPG from the gas cylinder to the burner of the stove. Shortly after the commencement of production, the petitioner No.1 entered into correspondence with the Bureau of Indian Standards (Respondent No.2) as also the Chief Controller of Explosives, Nagpur for the grant of ISI certification. In March, 1988, the LPG (Regulation of Supply and Distribution) Order, 1988 was passed. The petitioner had challenged the same by way of a writ petition being CW 2143/1988. The petitioners had also made a grievance that the Bureau of Indian Standards and the Chief Controller of Explosives, had failed and / or neglected to deal with the petitioner's application for the grant of ISI certification. By an order dated 06.12.1990, in CW 2143/1988, a Division Bench of this court directed the Bureau of Indian Standards to

depute competent persons to visit the factory of the petitioner and inspect the regulators manufactured by the petitioner and pass appropriate orders within a month. On 01.10.1991, the Controller of Explosives had informed the Director, Bureau of Indian Standards that the drawings in respect of the LPG regulators manufactured by the petitioner No.1 met with the approval of the Department of Explosives. Thereafter, on 28.02.1992, the Bureau of Indian standards granted ISI certification to the LPG regulators manufactured by the petitioner No.1. The certification marks licence No. CM/L-2341642, which had been granted to the petitioner in respect of IS: 9798-1981 Specification for Low Pressure Regulators for use with Liquefied Petroleum Gas had been continuously renewed thereafter on 15 occasions. The last such renewal was done in the year 2006. It is only in the renewal of 09.04.2007, that the 14th Endorsement has been made by deleting the single stage low pressure regulators for use with LPG mixtures, suitable for valves having 25.6 mm collar diameter and maximum rated capacity = 0.5 m^3/hr. The petitioners are aggrieved by this deletion.

3. It may be noted that in the meanwhile, in 1993, the LPG (Regulation of Supply and Distribution) Order, 1993 came into force, in

supersession of the 1988 LPG Order. The petitioners were aggrieved by the 1993 LPG Order also and another writ petition being WP 4476/1994 was filed. Rule D.B. was issued in the said writ petition on 27.10.1994.

4. On 31.08.2006, when WP(C) 2143/1988 came up for hearing before a Division Bench of this court, it was pointed out by the learned Additional Solicitor General that the LPG (Regulation of Supply and Distribution) Order, 2000 had by then come into force and the said order had repealed the LPG Order, 1993. On that date (31.08.2006), the learned counsel for the petitioner sought time to examine the matter. On the next date, i.e., on 14.09.2006, the learned counsel for the petitioner informed the court that the petitioner had filed a fresh writ petition challenging the validity of the LPG (Regulation of Supply and Distribution) Order, 2000 being WP(C) 14682-83/2006. In view of the fact that the LPG Order, 2000 had repealed the LPG Order of 1993 which, in turn, had repealed the LPG Order of 1988, the earlier writ petitions challenging the repealed orders were dismissed.

5. By a letter dated 05.01.2007, the Bureau of Indian Standards informed the petitioner No.1 that its certification marks licence was valid

upto 15.03.2007 and that, as per the Bureau of Indian Standards (Certification Regulations), 1988 [Regulation 4 (2) and 4 (6)] licence renewal has to be applied at least one month before the expiry date of the licence. Consequently, the petitioner No.1 applied for renewal of the licence and completed all the requisite formalities. In response to the renewal application, by the impugned letter dated 09.04.2007, the Bureau of Indian Standards informed the petitioner that the licence had been renewed from 16.03.2007 to 15.03.2008, but it was subject to the 14th Endorsement by which LPG regulators suitable for valves having 25.6 mm collar diameter and maximum rated capacity = 0.5 m^3/hr were deleted.

6. The main ground urged on behalf of the petitioners by way of challenge to the impugned deletion is that it amounts to a cancellation of the certification marks licence in respect of single stage low pressure regulators for use with LPG mixtures, suitable for valves having 25.6 mm collar diameter and maximum rated capacity = 0.5 m^3/hr. Mr Parag Tripathi, the learned senior counsel who appeared on behalf of the petitioners, submitted that a licence granted by the Bureau of Indian Standards may be cancelled in terms of the provisions of Regulation 5 (5)

(a)[1] of the Bureau of Indian Standards (Certification) Regulations, 1988 (hereinafter referred to as 'the BIS Certification Regulations, 1988'). He submitted that the licence could be cancelled only on the four grounds mentioned in the said Regulation 5 (5) (a). None of these grounds exist in the present case and, therefore, according to Mr Tripathi, the cancellation was bad. It was submitted by Mr Tripathi that more importantly, the provisions of Regulation 5 (5) (c)[2] of the said Regulation were not followed at all. The said provision stipulates that before the Bureau cancells any licence, it shall give the licencee not less than 14 days notice of its intention to cancel the licence. He submits that no such notice was given and no explanation was called for from the petitioners. Thus, according to Mr Tripathi, the fundamentals of natural justice, which are enshrined in the BIS Certification Regulations, 1988, have been given a complete go-by by the Bureau of Indian Standards and,

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1 "**5. Conditions of a Licence** - (5)(a) Any licence granted by the Bureau may be suspended or cancelled by it, if it is satisfied that the -

i. articles marked with the Standard Mark under a licence do not comply with the related Indian Standard or Standards; or
ii. licencee had used the mark in respect of a process which does not come up to the related Indian Standard or Standards; or
iii. licencee failed to provide reasonable facilities to any Inspecting Officer to enable him to discharge the duties imposed on him; or
iv. licencee has failed to comply with any of the terms and conditions of the licence."

2 "(c) Before the Bureau suspends or cancels any licence, it shall give the licencee not less than fourteen days' notice of its intention to suspend or cancel the licence."

therefore, the deletion carried out by the 14th Endorsement was liable to be set aside on this ground alone.

7. Mr Vikas Singh, the learned Additional Solicitor General, who appeared on behalf of the Bureau of Indian Standards, straightway drew my attention to the provisions of Section 15[3] of the Bureau of Indian Standards Act, 1986 (hereinafter referred to as 'the BIS Act'). He submitted that under the heading 'Grant of Licence', the said provision enabled the Bureau to grant, renew, suspend or cancel a licence. He then referred to section 2 (j)[4] of the BIS Act which defines "licence" to mean a licence granted under Section 15 to use the Indian Standards Certification Mark in relation to any article or process which conforms to the Indian Standards and includes any licence granted under the Indian Standard Institution (Certification Marks) Act, 1952 as was in force immediately before the date of establishment of the Bureau. Emphasis

3 "**15. Grant of licence.—(**1) The Bureau may, by order, grant, renew, suspend or cancel a licence in such manner as may be determined by regulations.

(2) The grant or renewal of the licence under sub-section (1) shall be subject to such conditions and on payment of such fees as may be determined by regulations."

4 "2. In this Act, unless the context otherwise requires, -

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j. "Licence" means a licence granted under section 15 to use the Indian Standards Certification Mark in relation to any article or process which conforms to the Indian Standard and includes any licence granted under the Indian Standards Institution (Certification Marks) Act, 1952 and is in force immediately before the date of establishment of the Bureau;"

was laid by Mr Vikas Singh on the expression "to use the Indian Standards Certification Mark in relation to any article or process". He submitted that the certification marks licence is not a licence issued in the abstract. The licence is issued so that the same can be used by a manufacturer in relation to any article or process. He submitted that unless and until a manufacturer was permitted to manufacture the goods in question, the licence could not be granted in respect thereof. He made this submission in the context of the fact that under the prevalent LPG Control Orders, regulators having a collar size of 25.6 mm were only reserved for oil companies and could not be used by private manufacturers. Therefore, he submitted that such a licence could not at all be issued in respect of LPG regulators having a collar size of 25.6 mm. The deletion that is impugned in the present writ petition was a consequence of this and, therefore, cannot be faulted.

8. Mr Vikas Singh then drew my attention to Regulation 4 (1)[5] of the BIS Certification Regulations, 1988 where, again, he laid stress on the expressions "is fit to use the Standard Mark" and "authorising the use

5 **"4. Grant of Licence** - (1) If the Bureau, after a preliminary inquiry, is satisfied that the applicant having regard to requisite skill, equipment, systems, resources, previous performance and antecedents relevant to the issuance of the licence is fit to use the Standard Mark, the Bureau shall grant a licence in Form II authorising the use of the Standard Mark in respect of the article or class of articles manufactured by the applicant or in respect of the process employed in any manufacture or work, subject to such terms and conditions as specified in these regulations. The Bureau shall intimate the applicant about grant of licence."

of the Standard Mark". These expressions were also highlighted by Mr Vikas Singh in continuation of his argument that a certification licence could only be valid if the same was used in respect of articles or class of articles which the licencee could manufacture legitimately.

9. Mr Vikas Singh also argued that, in any event, the present writ petition ought not to be entertained inasmuch as a provision for appeal has been made in the BIS Act itself. He immediately referred to Section 16[6] of the said Act whereunder any person aggrieved by an order made under Section 15, could prefer an appeal to the Central Government within such period as may be prescribed. Thus, Mr Vikas Singh submitted that this court ought not to entertain the present writ petition inasmuch as the petitioners had an adequate, alternative and

6 "**16. Appeal—.**(1) Any person aggrieved by an order made under section 15 may prefer an appeal to the Central Government within such period as may be prescribed.

(2) No appeal shall be admitted if it is preferred after the expiry of the period prescribed therefor :

Provided that an appeal may be admitted after the expiry of the period prescribed therefor if the appellant satisfies the Central Government that he had sufficient cause for not preferring the appeal within the prescribed period.

(3) Every appeal made under this section shall be made in such form and shall be accompanied by a copy of the order appealed against and by such fees as may be prescribed.

(4) The procedure for disposing of an appeal shall be such as may be prescribed:

Provided that before disposing of an appeal, the appellant shall be given a reasonable opportunity of being heard."

efficacious remedy available to them and they ought to have filed an appeal before the Central Government.

10. The learned Additional Solicitor General also drew my attention to the provisions of Regulation 5 (5) (f)[7] which stipulates that where a licence has been suspended or cancelled, or the term thereof has not been renewed on the expiry of the period of its validity, the licencee shall discontinue forthwith the use of the Standard Mark notwithstanding the pendency of any appeal before the Central Government under Section 16 of the Act. He submitted that the provision is so stringent inasmuch as it stipulates that if there be, with the licencee or his agents, any articles in stock which have been improperly marked, the licencee or his agents, as the case may be, are required to take necessary steps to get the Standard Mark on such articles either removed, cancelled, defaced or erased.

11. In response to the argument that the principles of natural justice had not been followed and that no notice had been given under

7 "(f) Where a licence has been suspended or cancelled, or the term thereof has not been renewed on the expiry of the period of its validity, the licencee shall discontinue forthwith the use of the Standard Mark notwithstanding the pendency, of any appeal before the Central Government under section 16 of the Act and if there be, with the licencee or his agents, any articles in stock which have been improperly marked, the licencee or his agents, as the case may be, shall take necessary steps to get the Standard Mark on such articles either removed, cancelled, defaced or erased."

Regulation 5 (5) (c) of the BIS Certification Regulations, 1988, the learned Additional Solicitor General submitted that the present case was merely one of non-renewal and was not a case of cancellation. For this purpose, he placed reliance on a decision of a Division Bench of this court in the case of ***M/s Gayco Private Ltd and Another v. Excise Commissioner, Delhi State and Another*****: ILR 1974 (1) Delhi 585**. The Division Bench had observed as under:-

> "The non-renewal of a licence as distinct from its cancellation or suspension is not the deprivation of a vested right of the holder of an expired licence."

The above observation was made in the context of a non-renewal of an L-1 licence for the wholesale and retail vend in respect of trade of foreign liquor. Rule 5.12 of the Delhi Excise Manual, Vol. II stipulated that whenever it was proposed not to renew a licence, the competent authority was required to give a notice to the holder of the licence, to record objections, if any, put forward by the licencee and to pass a definite order in writing. In this context, it was argued that the show cause notice which had been issued in that case under Rule 5.12 was vague and that a proper opportunity had not been allowed to the appellants therein. The refusal to renew the licence, it was contended, amounted to cancellation of the licence and the orders of the Collector

and the Excise Commissioner, were, therefore, submitted to be bad. The Division Bench observed that the notice issued under Rule 5.12 was not vague and that three grounds mentioned for the proposed non-renewal of the licences were objective facts which constituted the reason why the Collector proposed not to renew the licences of the appellants. The court held that the mention of these facts alone was sufficient. The proceedings envisaged under Rule 5.12 were not punitive in the sense that they amounted to a deprivation of a right of a person which he otherwise had in law and the proceedings were meant only to inform the mind of the Collector whether he should renew the licence or not in the facts of a particular case. It was in these circumstances that the aforesaid observations, which had been relied upon by the learned Additional Solicitor General, had been made.

12. The next decision relied upon by Mr Vikas Singh was that of a Division Bench of this court in the case of ***Kaushalya Devi v. Municipal Corporation of Delhi and Another*****: 48 (1992) DLT 92**. According to Mr Vikas Singh, this decision clearly established that there was no room for providing a hearing before renewal of a licence. The court was considering the question of renewal of a licence in respect of a

kiosk allotted by the MCD. It was contended by the petitioner therein that she had a right to be heard if the MCD did not wish to renew the licence. This contention was repelled by the court primarily on the ground that the petitioner did not have a right to have the licence renewed. He then referred to another decision of a Division Bench of this court in the case of ***Falcon Air Cargo & Travels (P) Ltd v. Union of India*****: 2001 (93) DLT 843.** He relied on this decision for the proposition that non-renewal would not amount to revocation of a licence. The Division Bench held that revocation or suspension essentially relate to a stage when a licence is in force. On the other hand, renewal comes at a stage when the period of currency of the licence is over.

13. Mr Vikas Singh then referred to the decision of a learned single Judge of this court in the case of ***Bentex Motor Control Gear Industries & Another v. Bureau of Indian Standards*****: 2001 (II) AD (Delhi) 404 = 2001 (89) DLT 437**. In that case, the petitioner therein had filed a writ petition seeking the quashing of a letter issued by the Bureau of Indian Standards which required the petitioner to first seek and produce the approval by the oil companies for the manufacture of the pressure regulators having a diameter of 25.6 ± 3 mm to enable the

Bureau of Indian Standards to process the petitioner's application for grant of certification by them. The petitioner therein had approached the court seeking a direction that the respondent BIS be asked to accord approval and certification for IS 9798 relating to pressure regulators by inspecting its factory without insisting upon prior approval from the oil companies. In that decision, the order passed by the Division Bench in the present petitioner's writ petition [CW 2143/1988] was referred to by the petitioners therein. It was contended by the petitioners therein that the order passed by the Division Bench had not been assailed by the Bureau of Indian Standards and, therefore, ought to be accepted as a precedent for that case. It was contended on behalf of the Bureau of Indian Standards that the order of the Division Bench was passed when the LPG Order of 1993 was in force and it was contended that under the new LPG Order, the provisions relating to parallel marketeer, public distribution system, manufacture, supply and possession of pressure regulators and the restrictions on supply or sale of liquefied petroleum gas equipments, etc. had entirely changed the situation. It was submitted that there was a prohibition on the sale of pressure regulators of the size of 25.6 mm to any person other than the oil companies. The supply of regulators of the size other than 25.6 mm collar diameter was permitted.

14. The learned single Judge took note of the submission that under the 1993 LPC Order, there was a prescribed size for pressure regulators which was to be supplied only to the oil companies. It was noted that it was for this reason that the Bureau of Indian Standards, with a view to discourage all and sundry from applying for certification of pressure regulators of prescribed size, was now requiring that the consent of the oil companies be obtained, prior to the Bureau entertaining any application for certification by it. In that case, the counsel appearing on behalf of the Bureau of Indian Standards conceded that in case the oil companies state that for accepting the petitioner as a supplier or having it registered with them, they require certification from the Bureau first, then it would process the application of the petitioner. In this background, the learned Single Judge observed that the petitioner therein was not entitled to the relief sought by it without first approaching the oil companies. The writ petition was disposed of by directing that the petitioner therein may approach the oil companies in the first instance and obtain their confirmation as an acceptable manufacturer.

15. The learned Additional Solicitor General also submitted that no mandamus could be issued to violate a law. He submitted this on the strength of the observation of the Supreme Court in the case of ***Santosh Kumar Verma and others v. State of Bihar through Secretary, Department of Urban Development, Govt. of Bihar, New Secretariat, Patna and others:*** **1997 (2) SCC 713** (para 5). He also referred to the decision of the Supreme Court in the case of ***Vice-Chancellor, University of Allahabad and Ors. v. Dr Anand Prakash Mishra and Ors*.: 1997 (10) SCC 264** (para 13). In this decision, the Supreme Court observed that it is the settled legal position that a mandamus cannot be issued to violate the law or to act in violation of the law. He submitted that the prayer made by the petitioners for issuance of a certificate in respect of the deleted item would amount to issuance of a mandamus contrary to law and that is impermissible. He submitted that by virtue of the LPG Order, 2000, the petitioners cannot manufacture LPG regulators having a collar diameter of 25.6 mm. Therefore, any mandamus directing the issuance of the certification marks licence in respect of this size of LPG regulators would be contrary to law and such a mandamus cannot be issued. The learned Additional Solicitor General submitted that the LPG Order of 2000 was in operation. Although the writ petitions

challenging the same had been filed by the petitioners, no stay had been granted by this court. He referred to the various provisions of the LPG Order, 2000 to indicate that there was a restriction on persons making and supplying LPG regulators. He referred to Schedule II to the said LPG Order, 2000 to indicate that the same was applicable to distributors of a government oil company. The pressure regulator prescribed for such distributors was to conform to IS: 9798 specifications having an inlet diameter of 25.6 mm. In other words, such regulators were restricted for use by Government oil companies. Schedule III to the LPG Order, 2000 had application to the Parallel Marketing System. Parallel marketing was permitted under the Parallel Marketing System to deal with and use, *inter alia*, pressure regulators conforming to IS specifications 9798 of any size and having an inlet diameter "other than of 22.0 mm". According to the learned Additional Solicitor General, reference to 22.0 mm is a mistake and it should actually be 25.6 mm. There was a great deal of debate on this aspect. Mr Tripathi, who appeared for the petitioners, submitted that what appears in the Gazette cannot be wished away by calling it a mistake or a misprint. Therefore, according to him, there was no bar with regard to 25.6 mm regulators.

16. Having examined and discussed the arguments advanced by the counsel for the parties, the crucial question that needs to be answered is – whether the impugned deletion would amount to a cancellation ? In my view, the deletion of regulators having a collar diameter of 25.6 mm would not amount to a cancellation. A plain reading of the provisions of Section 15 (1) indicates that the Bureau may, by order, grant, renew, suspend or cancel a licence in such manner as may be determined by regulations. The regulations have prescribed that before the Bureau cancels any licence, it shall give the licencee not less than 14 days notice of its intention to cancel the licence [See: Regulation 5 (5) (c) of the BIS Certification Regulations, 1988]. It is further provided under Regulation 5 (5) (d) that on receipt of such notice, the licencee may submit an explanation on his behalf to the Bureau within seven days thereof. If an explanation is submitted, the Bureau may consider the explanation and give a hearing to the licencee within 14 days from the date of receipt of such explanation or before the expiry of the notice whichever is longer. Regulation 5 (5) (e) provides that if no explanation is submitted, the Bureau may, on the expiry of the period of notice, cancel the licence. Under Regulation 5 (8), it is provided that the decision of the Bureau under Regulation 4 (4) or Regulation 5 (5) together with the grounds for

arriving at such decision shall be communicated, in writing by registered post, to the applicant or the licencee, as the case may be. It is, therefore, clear that as per the manner determined by the Regulations, a licence can be cancelled only after a notice is given and if an explanation is submitted by the noticee after hearing is given to him. The decision is also required to be a reasoned decision in writing and is required to be communicated to the licencee by registered post. But, there is no such procedure or requirement for renewal or non-renewal.

17. If one looks at Section 15 of the said Act one finds that it has reference to (a) grant of a licence; (b) renewal of a licence; (c) suspension of a licence; and (d) cancellation of a licence. All these fall in distinct and different categories. Renewal of a licence is not the same as a grant and it is definitely distinct from suspension or cancellation. The three Division Bench decisions of this court in ***Gayco Pvt. Ltd*** *(supra)*, ***Kaushalya Devi*** *(supra)* and ***Falcon Air Cargo*** *(supra)* make it very clear that a non-renewal does not amount to a cancellation. The primary reason for this cancellation is that a licence does not have a vested right in renewal. Whereas in the case of a cancellation a right vested in the licence is taken away. It is for this reason that renewal and

cancellation have been treated differently. While the right to hearing incumbent before a vested right is taken away by a cancellation of a licence, no such right enures in favour of a licencee while his licence is being considered for renewal. In the present case, what has happened is that the renewal has been granted by excluding regulators of collar diameter of 25.6 mm. The effect of this is that the licence in respect of such regulators has not been renewed. It is not a case of cancellation as is sought to be made out by the petitioner. The previous licence had run for its entire term. The renewal has been done sans this size. The petitioner had no vested right in regulators of this size. Therefore, non-renewal of the licence in respect of this size of regulators does not amount to a cancellation of the licence. Consequently, the provisions of Regulation 5 (5) (c) do no get attracted.

18. This leaves for discussion the question of alternative remedy raised by the learned Additional Solicitor General. Section 16 provides for an appeal by any person who is aggrieved of an order made under Section 15. The learned counsel for the petitioner relied upon the decision of the Supreme Court in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai & Ors.*****: 1998 (8) SCC 1**, wherein it is observed

that the existence of an alternative remedy shall not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for enforcement of any fundamental right; or where there has been a violation of the principles of natural justice; or where the order or proceedings are wholly without jurisdiction; or the *vires* of an Act is challenged. The words used by the Supreme Court are as under:-

> "15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this court not to operate as a bar in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

The learned counsel for the petitioner had placed reliance on this decision on the basis of his submission that there has been a violation of the principles of natural justice. But, I have already held that there has been no such violation. Therefore, the petitioner can derive no assistance

from this decision. Thus, on the ground of an alternative remedy being available, also, this writ petition is liable to be dismissed.

In these circumstances, the writ petition is dismissed. No costs.

BADAR DURREZ AHMED
(JUDGE)

September 05, 2007
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